

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JAN -7 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0148
)	DEPARTMENT A
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ALBERTO MAZON III,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20090291001

Honorable Teresa Godoy, Judge Pro Tempore

AFFIRMED

Tom Horne, Arizona Attorney General
By Kent E. Cattani and Alan L. Amann

Tucson
Attorneys for Appellee

Emily Danies

Tucson
Attorney for Appellant

B R A M M E R, Presiding Judge.

¶1 Alberto Mazon III appeals from his convictions of six counts of sexual conduct with a minor under the age of twelve. He argues the trial court erred in denying his motion for a new trial made pursuant to Rule 24.1, Ariz. R. Crim. P. Finding no error, we affirm.

¶2 Mazon was found guilty as described above after a four-day jury trial. He then moved for a new trial, contending he did not receive a fair trial because the victim's family members had "pander[ed] for [the jury's] influence" during closing arguments by "sobbing loudly." He also asserted one of the jurors had given the victim's family "the 'thumbs up' sign prior to . . . deliberations." At a hearing on his motion, Mazon presented two witnesses, his cousins, who testified that members of the victim's family had been crying and had left the courtroom and returned several times. They opined that this conduct had distracted the jury and that it appeared the jury had not been "paying attention" during the closing argument presented by Mazon's counsel. Neither witness testified they had seen a juror signal anyone.

¶3 The trial court denied Mazon's motion, stating that, other than an incident on the first day of trial, "both sides" had "acted extraordinarily appropriate" and were "very well behaved [and] respectful." It further noted both sides had been careful "to not present any sort of distractions." The court sentenced Mazon to six consecutive life sentences, each without the possibility of release for thirty-five years. This appeal followed.

¶4 On appeal, Mazon contends the trial court erred in denying his new trial motion, again asserting the victim's family's emotional displays improperly influenced the jury and violated his right to a fair trial.¹ We will not disturb a trial court's ruling on a new trial motion absent an abuse of the court's discretion. *State v. Spears*, 184 Ariz. 277, 287, 908 P.2d 1062, 1072 (1996). Motions for new trial "'are disfavored and should be granted with great caution.'" *Id.*, quoting *State v. Rankovich*, 159 Ariz. 116, 121, 765 P.2d 518, 523 (1988).

¹To the extent Mazon's new trial motion was based on alleged juror misconduct, he does not raise this claim on appeal.

¶5 The trial court was best situated to observe the victim’s family’s conduct and to evaluate the effect, if any, of that conduct on the jury. *See State v. Bible*, 175 Ariz. 549, 598, 858 P.2d 1152, 1201 (1993) (trial court “in the best position to evaluate ‘the atmosphere of the trial, the manner in which the objectionable statement was made, and the possible effect it had on the jury and the trial’”), *quoting State v. Koch*, 138 Ariz. 99, 101, 673 P.2d 297, 299 (1983); *State v. Goodyear*, 98 Ariz. 304, 320, 404 P.2d 397, 408 (1965) (trial court “vested with a large measure of discretion in determining what [spectator] conduct is prejudicial to defendant”). The court also was in the best position to evaluate the credibility of the witnesses Mazon presented at the hearing on his motion. *See State v. Olquin*, 216 Ariz. 250, ¶ 10, 165 P.3d 228, 230 (App. 2007). Mazon has not identified any basis for us to question the court’s findings or interfere with its denial of his new trial motion.

¶6 We therefore affirm Mazon’s convictions and sentences.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge